

SECTION 2000. GENERAL REGULATIONS

2100. DEFINITIONS.

For the purposes of these Rules and Regulations the following words and terms used herein are hereby defined or the meaning thereof explained, extended, or limited as stated in G.L. c. 41, s. 81L, as amended. Other terms or words or phrases not defined herein or in the Subdivision Control Law shall be construed according to the common and approved usage of the language, but technical words and phrases and such other terms or phrases as may have acquired a particular and appropriate meaning in law shall be construed and understood according to such meaning.

Abutter shall mean (a) an owner of land sharing a common property line with the owner of land referred to in a subdivision application and (b) an owner of land which is directly across a way from the frontage of said subdivision land.

Agent: One or more persons designated to represent the applicant before the Planning Board.

Applicant shall mean the owner of the land referred to in an application filed with the Planning Board, or the owner's duly authorized representative.

As Built Drawings: The drawings, which show the construction of a particular structure or work as actually completed.

Board shall mean the Planning Board of the Town of Marion.

Building: A structure, or portion thereof, either temporary or permanent, having a roof or other covering forming a structure for the shelter of persons, animals and property of any kind. No trailer or mobile home shall be used as a building. The term "building" shall be construed as if followed by the words "or portion thereof."

Building Inspector: The municipal official specified in the Massachusetts State Building Code and the building code for the Town of Marion designated as such by the Board of Selectmen.

Certified by (or Endorsed by) a Planning Board: As applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean, bearing a certification or endorsement signed by the majority of the members of the Planning Board, or by its Chairman or Clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the Register of Deeds and recorder of the land court, signed by a majority of the Board.

Common Open Space: A parcel or parcels of permanently protected land or an area of water, or a combination of land and water within the site designated and intended for the use and enjoyment of Town residents and/or residents of Flexible Development Housings. Common Open Space

may contain such complementary structures and improvements as are necessary and appropriate to its use and enjoyment.

Definitive Plan: See Plan, Definitive.

Days: Refers to consecutive calendar days.

Drainage: The control of surface water within the tract of land to be subdivided.

Driveway: An improved access (other than a street) connecting between a street and one or more parking or lading spaces. Nothing in this definition is meant to preclude that access from being shared with abutting land by granting of a Right-Of-Way to abutting land/lot owners. In neither case does it qualify as a way, as defined in "Private Way" or "Right of Way", nor does it satisfy the frontage requirements for buildable lots.

Easement shall mean a right acquired by a public authority or other person for use or control of property for utility or other designated public purpose.

First Flush: The volume generated by the first 1.25 inches of storm water runoff. This first flush of runoff carries the majority of accumulated pollutants from impervious surfaces. The first flush treatment volume (V_t) is determined by the following formula:

$$V_t = (1.25 \text{ inches}) (I) (\text{Site Area})$$

Where, I is the percentage of impervious area divided by 100 for residential area, the percentage impervious area is obtained from the TR55 table "Runoff curve numbers for urban area", "Residential district by average lot size."

Frontage shall have the same definition as that used in the Zoning By-law.

Lot shall mean an area of land in one ownership, with definite boundaries used, or set aside and available for use, as the site of one or more buildings.

Lot, Corner shall mean a lot which has legal frontage on both a public way and on a proposed subdivision way, and which shall be shown on a subdivision application and shall be considered a part of that plan.

Lot Area: The horizontal area of the lot exclusive of any way in a public or private way open to public usage. For computation of minimum lot area requirements, see Marion Zoning By-law.

Massachusetts DPW Standard Specifications for Highways, Bridges and Waterways shall refer to the latest edition with amendments.

Massachusetts General Laws Annotated or M.G.L. shall mean the General Laws of the Commonwealth of Massachusetts, Ter. Ed., with all additions thereto and amendments thereof. In the case of a rearrangement of the General Laws, any citation of particular sections herein set forth shall be applicable to the corresponding sections in the new codification.

Municipal Services shall mean sewers, surface water drains, and other private or public utilities including water pipes, gas pipes, electric lines, cable television lines, telephone lines, fire alarm lines, and their respective appurtenances.

Owner shall mean, as applied to real estate, the person (hereinafter defined) holding the ultimate fee simple title to a parcel, tract, or lot of land, as shown by the record in the appropriate Land Registration Office, Registry of Deeds, or Registry of Probate.

Park Strip: The area between the paved road, the property line or sidewalk/bike path.

Permanent Benchmark shall mean a permanent reference point with the elevation accurately established by stone bounds and referenced to the United States Coast and Geodetic Survey datum.

Person shall mean an individual, partnership, corporation, or two or more individuals or a group or association of individuals, having common or undivided interests in a tract of land.

Plan, Definitive: The plan of a subdivision as submitted to the Board for approval, to be recorded in the Registry of Deeds or Land Court when approved by the Board.

Plan, Preliminary: A Plan of a proposed subdivision or re-subdivision of land of sufficient accuracy to be used for the purpose of discussion and review and meeting the requirements of the Subdivision Rules and Regulations.

Preliminary Plan: See Plan, preliminary.

Probable Maximum High Ground Water: The Probable Maximum High Ground Water shall be defined as the greatest elevation above mean sea level at which ground water is expected to occur at any point on the site. This elevation shall be determined by direct observation of ground water in specific areas of the site and by comparison with ground water monitoring wells in the Town of Marion. The applicant shall estimate the ground water elevations utilizing accepted methods for calculating probable maximum ground water elevations such as the US Geological Survey method for estimating probable high ground water levels in Massachusetts.

Private Way: See Way, Private.

Public Way: See Way, Public.

Record Drawings: Equivalent to As-Built drawings.

Registered Mail: Refers to registered or certified mail.

Right of Way: A strip of land owned by another but over which persons sharing the right of way have a right to pass and re-pass. Unless the strip meets the requirements of "Private Way", frontage on the way does not satisfy the requirement for buildable lots.

Roadway or Street shall mean that portion of-way, or street layout which has been prepared and constructed for vehicular traffic.

Special Flood Hazard District shall mean the Special Flood Hazard District as established by the Marion Zoning Bylaw.

Secondary Street: See Street, Secondary

Storm Water Management Area: The portion of the property where physical storm water management activities are conducted. (i.e. treatment, retention/detention, etc.). The area includes the space for the management activities and access for maintenance.

Street: An improved public way laid out by the Town of Marion, the Plymouth County Commissioners or the Commonwealth of Massachusetts, or a way which the Marion Town Clerk certifies is maintained by public authority as a public way, or a way in existence having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and buildings erected to be erected thereon. A way shall not be a "Street" with respect to any lot which does not have appurtenant to it a recorded right of access to and over such way for vehicular traffic.

Street, Dead-end: A street, portion of a street or combination of streets in which accessibility is limited to a single means of ingress and egress. Any proposed street which intersects solely with a dead-end street shall be deemed to be an extension of the dead-end street. Dead-end streets and their extensions, if any, shall be measured between the sideline intersecting street and the center of the turn-around. For the purposes of this regulation, a cul-de-sac is a dead-end street.

Street, Local: A street that, in the opinion of the Planning Board, primarily serves abutting residences and is not intended to serve through traffic.

Street, Secondary: A street that, in the opinion of the Planning Board, primarily serves as a collector street for "Local Streets" or as a minor through traffic way and secondarily as access to abutting residences.

Subdivision shall mean "(t)he division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of

land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision." See G.L. c. 41, s. 81L.

Subdivision Control Law shall mean M.G.L. c. 41, ss. 81K to 81GG, inclusive, and any amendments thereof, additions thereto or substitutions therefor.

Town shall mean the Town of Marion.

Water Supply Protection District shall mean the Water Supply Protection District as established by the Marion Zoning By-laws and further described in Section 8.2 of the Marion Zoning By-law.

Way or Right-of-Way shall mean the full strip of land designated as a way, consisting of the roadway, and any planting strips or sidewalks. A way so designated shall be available only for such uses as are customary for ways in the Town, and shall not be available for any private construction such as buildings, fuel tanks, septic systems, fences, or walls.

Yard, Front shall mean land extending across the required width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of the front yard shall be the minimum distance between the building and the front lot line.

Zoning By-Law shall mean the zoning by-law of the Town of Marion.

2200. SUBMITTING, COMPLETING, AND WITHDRAWING APPLICATIONS

2210. Application and Other Forms. Applicants shall submit either an Approval Not Required Plan Application, a Preliminary Subdivision Application, or a Definitive Subdivision Application, all of which shall be submitted as required herein. Other forms required to be submitted under these rules shall be specified by the Planning Board or its agent, and will normally be provided by the Planning Board or its agent. All plans and applications shall comply in all respects with the provisions of these Rules and Regulations, unless the Board authorizes a waiver therefrom in specified instances.

2220. Place of Submittal and Filing. The submittal of all applications for consideration by the Planning Board shall be completed by delivering all required application materials (including a copy of the notice filed at the Town Clerk's Office, date stamped by said office) to the agent of the Planning Board at the Planning Board Office during office hours; or during a Planning Board meeting; and by filing the notice of said submittal at the Office of the Town Clerk as required herein. The applicant must check with these offices to verify hours during which they will be open. Application materials submitted to the Planning Board shall be the property of the Town and a copy of all application materials shall be retained by the Planning Board.

2230. Notice to Town Clerk of Submittal. Every person submitting an application to the Planning Board under these Regulations shall concurrently file written notice at the office of the Town Clerk by hand delivery or by registered mail, postage prepaid, that such application has been submitted to the Planning Board. Said notice shall describe the land to which the plan relates in sufficient detail for identification, shall state the date when such application was submitted to the Planning Board, and shall include the name, address and daytime telephone numbers of the property owner, and of the person making application if different from the

property owner. A copy of the completed application form shall be filed with said notice at the Office of the Town Clerk; and a statement that such notice to the Town Clerk has been made shall be included as part of any application to the Planning Board.

2240. Status of Applications. Within seven (7) days of the submittal date of an application, or within seven (7) days of any subsequent submittal date in response to a determination that any such application was incomplete, the Planning Board or its agent shall review said application and inform the applicant and the Town Clerk in writing as to whether said application is deemed complete and properly submitted. An application shall be deemed complete only if the applicant has provided all of the information required by these regulations, with the appropriate number of copies and in the appropriate format. If said application is determined to be incomplete or improperly submitted, the applicant shall receive written notice from the Planning Board or its agent listing the items or information needed for a complete and proper application. When the application is deemed complete and properly submitted by the Planning Board or its agent, it shall notify the Town Clerk in writing of the final submittal date.

The final submittal date shall be the date that the completed and properly submitted application is received by the Planning Board or its agent. For applications that have been deemed incomplete, the applicant must agree in writing to any new submittal date in order for any additional information or material to be considered part of the original application.

2250. Withdrawing Applications. An applicant may withdraw a submitted application, without prejudice as to the rights set forth in G.L. c. 40A, s. 6 and G.L. c. 41, s. 81Q, by filing with the Planning Board and the Town Clerk a written statement of withdrawal. The applicant shall be responsible for all costs incurred by the Town in processing and reviewing said application up to and including the withdrawal, and shall not be entitled to a reimbursement of any fee paid.

2260. Responsibility for Information and Materials. By submitting an application or request under these Regulations, the applicant assumes responsibility for the accuracy and representations made or implied for all of the information and materials that constitute said application or request.

2300. RELATION TO ZONING BY-LAW.

2310. Conformance. The Board shall not approve or modify and approve any plan of a subdivision of land unless all lots and other aspects of such plan conform with the Zoning By-law of the Town or a variance from the terms thereof has been granted by the Board of Appeals.

2320. Issuance of Building Permits. The official in the Town authorized to issue building permits shall not issue any permit for erection of a building until first satisfied (a) that the lot on which the building is to be erected is not within a subdivision, (b) that a way furnishing the access to the lot within a subdivision as required by the subdivision control law is shown on a recorded plan and that any conditions endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied, and (c) that all other applicable requirements have been met.

2400. MODIFICATION, AMENDMENT, OR RESCISSION.

2410. Powers. The Board, on its own motion or on the petition of any interested person, shall have the power to modify, amend, or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan, after due notice and opportunity to the owner to be heard in accordance with G.L. c. 41, s. 81W, as amended.

2500. FEES.

2510. Professional, Legal and Technical Assistance. The Board may assign as its agents appropriate Town officials, and may hire professional and legal technical experts to review plans and inspect improvements at the cost of the applicant.

2520. Appendix A. The fees indicated in Appendix A - Planning Board Fee Schedule - shall accompany the submittal of application materials of the various plans specified in the Rules and Regulations, to cover costs of processing, technical review, and inspection. No application shall be deemed submitted unless the appropriate fee accompanies said application. The fees shall be submitted by certified or bank check.

2600. PLAN BELIEVED NOT TO REQUIRE APPROVAL.

2610. Submission. Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes that said plan does not require approval under the Subdivision Control Law, shall submit to the Board at a regular meeting said plan, seven (7) prints thereof, and two (2) copies of a properly executed Form A - Application for Endorsement of a Plan Believed Not to Require Approval, accompanied by the necessary evidence to show that the plan does not require approval. In order to be considered, the plan and Form 2A must be submitted to the Planning Board before noon of the Wednesday prior to the next regular meeting. The applicant shall also submit the fee as set forth in Appendix A - Planning Board Fee Schedule with the application form. Said person shall file, by delivery or registered mail, a notice with the Town Clerk stating the date of submission for such determination. The Board will review the plan to determine whether it is a subdivision and whether it conforms to the standards for endorsement.

2620. Required information. Said plan shall be of a minimum dimension of nine and one-half inches by fourteen inches (9 1/2" x 14") but not to exceed a dimension of twenty four inches by thirty six inches (24" x 36"), drawn at a scale of one (1) inch equals forty (40) feet, and shall contain the following information:

2621. Identification of the plan by the name of the owner of record and the location of the land in question;

2622. The statement "Approval Under the Subdivision Control Law Not Required", and sufficient space for the date, and all signatures of the members of the Board;

2623. Zoning classification and location of any zoning district boundaries that may lie within the locus of the plan;

2624. In the case of creation of a new lot, the remaining land area and frontage of the land in the ownership of the applicant, if any;

2625. Notice of any decisions by the Zoning Board of Appeals, including but not limited to variances and special permits regarding the land or any buildings thereon;

2626. Names of abutters from the latest available Assessor's records unless the applicant has knowledge of any changes subsequent to the latest available records;

2627. Distance to the nearest permanent monument; contours at the scale of available topographical maps, or where applicable, contours at a scale sufficient to demonstrate that each lot has present vehicular access from the way serving the site;

2628. Location of all existing buildings, including setback and side and rear yard designations and any existing structures on any remaining adjoining land owned by the applicant and dimensions of yards relating to such structures;

2629. Location of any easement, or way, public or private, across the land, with a designation as to the use of the same.

2630. Denial of Endorsement. If the Board determines that the plan does require approval under the Subdivision Control Law, or does not conform to the standards for endorsement hereunder, it shall within twenty-one (21) days of submission of said plan, so inform the applicant and return the plan. The Board shall also notify the Town Clerk of its determination.

2700. ACCESS ADEQUACY REGULATIONS

2710. General. Plans shall be endorsed as not requiring approval under the Subdivision Control Law and subdivision plans shall be approved only if each building lot to be created by such plan has adequate access as intended under the Subdivision Control Law, G.L. c. 41, ss. 81K - 81GG.

2720. Standards of Adequacy. Streets within a subdivision shall be considered to provide adequate access if, and only if, said streets comply with the standards established in the Town's Subdivision Rules and Regulations. Ways providing access to streets within a subdivision shall be considered to provide adequate access where, prior to construction on any lots, applicant for subdivision approval assures that such access will be in compliance with the Subdivision Regulations for right of way width, pavement width, maximum grade, and sight distance requirements applicable to ways within a subdivision.

2730. Direct Access A subdivision that has its main access to an existing way in adjoining Town, but has some of its lots within the geographical boundaries of the Town of Marion, must provide additional direct and exclusive access to a public way within the Town of Marion. This access shall serve as a means for the residents whose lots lie within Marion to be served by and to reach Marion Town services. The lots and ways that serve the lots within the Marion boundaries must meet all of the requirements of the Zoning By-laws and of the Subdivision Rules and Regulations of the Town of Marion.

No Building Permit for building on any of the lots within the Marion boundaries shall be issued until the way or ways connected directly to Marion ways are physically completed.

2740. Multiple Access When a subdivision road is over five hundred (500) feet in length, or a subdivision contains more than thirty-five (35) homes, a second emergency access sufficient in construction and width (but not necessarily paved) to allow emergency vehicles must be provided.

2750. Obligations. The Board may require, as a condition of its approval of a subdivision plan, that the applicant dedicate or acquire and dedicate a strip of land for the purpose of widening access ways to a width as required in these regulations, above, and that applicant make physical improvements within such way or compensate the town for the cost of such improvements in order to meet the standards specified above.

2760. Waiver of Access Standards. The Board may waive strict compliance with these access regulations only upon its determination, following consultation with the Selectmen, Road Superintendent, Police Chief, Fire Chief, or professional consultants, that the way in fact will be otherwise sufficient to serve the needs for access to serve potential uses of land abutting on or served by the way in question.

2800. WAIVERS

2810. General. Pursuant to G.L. c. 41, s. 81R, strict compliance with these Rules and Regulations may be waived when, in the judgment of the Board, such action is in the public interest, not inconsistent with the Subdivision Control Law, and promotes public health and safety. No waiver(s) shall be granted unless:

1. Applications for a definitive plan hearing include in writing all requested waivers.
2. A listing of the above waivers and a brief description of them are included in the existing hearing notice.
3. The following procedure shall apply if an applicant request further waivers: the hearing shall be continued so that one week's public notice of the continued hearing and additional waiver(s) can be given by a single legal advertisement in a local paper.
4. The reference to the Planning Board's waiver policy document in the original hearing notice shall be considered adequate public notice for any waiver(s) proposed by the Board itself at any time during the hearing process.
5. The nature of the waiver(s) requested and the reason(s) for granting or denying it shall be recorded as part of the Planning Board minutes.
6. Waiver(s) granted by the Planning Board shall be shown on the final plan submitted for approval.

2900. ONE DWELLING PER LOT

Not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision or elsewhere in the Town. Not

more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the Town, without the consent of the Planning Board, and such consent may be conditional upon the provision of adequate ways furnishing access to each site for such a building, in the same manner as otherwise required for lots within a subdivision.

Exceptions to this rule are possible, as set forth in the M.G.L. These exceptions are possible only when the requirements of the respective section have been met.